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14 IN THE UNITED STATES DISTRICT COURT
15 FOR THE EASTERN DISTRICT OF CALIFORNIA

17 **BISHOP PAIUTE TRIBE, a federally**
18 **recognized Indian tribal government,**

19 Plaintiff,

20 v.

21 **GAVIN NEWSOM, Governor of the State**
22 **of California, and the STATE OF**
23 **CALIFORNIA,**

24 Defendants.

1:20-CV-01318-ADA-SKO

JOINT REQUEST TO MODIFY ORDER
APPOINTING MEDIATOR; ORDER

(Doc. 64)

1 Frank Lawrence and Zehava Zevit, attorneys of record for plaintiff Bishop Paiute Tribe, a
2 federally recognized Indian Tribe (Plaintiff), on the one hand, and Noel A. Fischer and Lisa L.
3 Freund, Deputy Attorneys General, attorneys for defendants Governor Gavin Newsom, in his
4 official capacity as Governor of California, and the State of California (State) (collectively, State
5 Defendants) on the other hand, hereby jointly request that the Court modify its October 4, 2023
6 Order Granting Parties' Joint Stipulation for Appointment of Mediator.

7 Specifically, the parties jointly request the modification to not require the submission of
8 Last Best Offer compacts to the mediator within ten days of October 4, 2023, for the following
9 reasons: 1) before the State Defendants can enter into an agreement retaining Judge Bales, the
10 State Defendants must amend their contract with FedArb, the ADR organization through which
11 Judge Bales will provide his services, and the process of amending that contract will take longer
12 than two weeks; 2) due to its meeting schedule and the requirements of Tribal law, Plaintiff's
13 governing body will not be able to complete its review and approval of its Last Best Offer
14 compact in this timeframe; 3) the parties require flexibility in setting with the mediator due dates
15 for the submission of Last Best Offer compacts and subsequent briefing for the mediator
16 regarding these compacts to accommodate for other workload and scheduling issues; and 4) the
17 mediator's schedule as represented by FedArb in a preliminary phone call with Plaintiff's
18 counsel.

19 Subsequent to the Court's initial order, Magistrate Judge Sheila K. Oberto issued a
20 subsequent order which mirrored the language in the parties' proposed stipulation. (Doc. 63.)
21 The parties do not know the effect of this subsequent order (Doc. 63) on the Court's prior order
22 (Doc. 62).

1 Allowing the mediator and parties to establish the schedule for submission of the parties'
2 respective Last Best Offer compacts (and briefing) would allow for the prompt and orderly
3 completion of the Indian Gaming Regulatory Act (IGRA) post-judgment mediation process,
4 while accommodating the internal needs and schedules of all parties.

5 Dated: October 6, 2023

Respectfully submitted,

6 ROB BONTA
7 Attorney General of California
8 T. MICHELLE LAIRD
9 Acting Senior Assistant Attorney General
10 NOEL A. FISCHER
11 Deputy Attorney General

12 */s/ Lisa L. Freund*

13 LISA L. FREUND
14 Deputy Attorney General
15 Attorneys for Defendants

16 Dated: October 6, 2023

Respectfully submitted,

17 LAW OFFICE OF FRANK LAWRENCE

18 */s/ Frank Lawrence (as authorized*
19 *on 10/6/23)*

20 Frank Lawrence
21 Attorneys for Plaintiff

ORDER

In view of the parties’ foregoing stipulation (Doc. 64), and good cause appearing, the Court hereby MODIFIES its October 4, 2023, Order (Doc. 63) appointing retired Arizona Supreme Court Chief Justice Scott Bales (Justice Bales) to serve as the mediator in this matter pursuant to 25 U.S.C. § 2710(d)(7)(B)(iv).¹ Pursuant to this modification, the parties are no longer directed, within ten days of the Court’s October 4, 2023, Order, to submit to the mediator “a proposed compact that represents their last best offer for a compact.” 25 U.S.C. § 2710(d)(7)(B)(iv). Rather, the parties are ordered to work cooperatively in jointly advising Justice Bales of his appointment, jointly preparing and submitting to him instructions on his duties as a court appointed mediator under 25 U.S.C. § 2710(d)(7)(B)(iv), and establishing with his mediation service a mutually acceptable time schedule for Justice Bales to complete the performance of his mediator duties.

After receiving the parties’ proposed compacts that represent their last best offers for a compact pursuant to a schedule agreed upon by the parties and the mediator, the mediator “shall select from the two proposed compacts the one which best comports with the terms of [IGRA], . . . any other applicable Federal law[,] and with the findings and order,” (Doc. No. 54), of this Court. *Id.* Once the mediator selects a compact as directed, he “shall submit [the selected compact] to the State and the Indian tribe.” *Id.* at § 2710(d)(7)(B)(v). “If [the] State consents to a proposed compact during the 60-day period beginning on the date on which the proposed compact is submitted by the mediator to the State under clause (v), the proposed compact shall be treated as a Tribal-State compact entered into under [§ 2710(d)(3)].” *Id.* at § 2710(d)(7)(B)(vi). “If the State does not consent during the 60-day period described [above] to [the] proposed compact submitted by [the mediator to the State], [he] shall notify the Secretary” of the Interior. *Id.* at § 2710(d)(7)(B)(vii).

¹ District Judge Ana de Alba’s Order on this same subject, issued October 4, 2023 (Doc. 62) is also modified hereby.

1 The Secretary of the Interior, in consultation with the Tribe, shall then prescribe procedures
2 for operation of class III gaming by the Tribe that are consistent with the compact selected by the
3 mediator, the provisions of IGRA, and the laws of the State. *Id.*

4
5 IT IS SO ORDERED.

6 Dated: **October 10, 2023**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE